

UNITED STATES OF AMERICA
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

MISSOURI STATE CONFERENCE OF)
THE NATIONAL ASSOCIATION FOR)
THE ADVANCEMENT OF COLORED)
PEOPLE, REDDITT HUDSON,)
F. WILLIS JOHNSON, and DORIS)
BAILEY,)

Plaintiffs,)

vs.) No. 4:14-CV-2077 RWS

FERGUSON-FLORISSANT SCHOOL)
DISTRICT, and ST. LOUIS COUNTY)
BOARD OF ELECTION COMMISSIONERS,)

Defendants.)

BENCH TRIAL - VOLUME VI

BEFORE THE HONORABLE RODNEY W. SIPPEL
UNITED STATES DISTRICT JUDGE

JANUARY 19, 2016

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Proceedings recorded by mechanical stenography, produced by
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I N D E X

	Direct	Cross	Redirect	Recross
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DEFENDANTS' WITNESSES

COURTNEY GRAVES, Ph.D.

(By Ms. Gabel)

4

(By Ms. Lakin)

19

(By Ms. Gabel)

26

CLOSING ARGUMENTS

(By Ms. Ebenstein)

28

(By Mr. Rothert)

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(By Ms. Ormsby)

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1 (The following proceedings were held in open court
2 on January 19, 2016 at 9:40 a.m.):

3 THE COURT: Good morning.

4 ALL ATTORNEYS: Good morning.

5 THE COURT: You ready? Who has cross over here?
6 Who has cross? I want to make sure you're ready. You've got
7 the pattern down after a week. If you'd call your next
8 witness, please.

9 MS. GABEL: Good morning, Your Honor. The District
10 calls Dr. Courtney Graves.

11 THE COURT: If you would step forward, ma'am, and be
12 sworn.

13 You may proceed.

14 COURTNEY GRAVES, Ph.D.,
15 Having been first duly sworn, was examined and testified as
16 follows:

17 DIRECT EXAMINATION

18 BY MS. GABEL:

19 Q. Good morning.

20 A. Good morning.

21 Q. My name is Angela Gabel. I represent the
22 Ferguson-Florissant School District. Could you please state
23 your name for the record.

24 A. Courtney Graves.

25 Q. And do you live in the Ferguson-Florissant School

1 District?

2 A. Yes, I do.

3 Q. What's your address?

4 A. 3169 Santiago Drive, Florissant, Missouri 63033.

5 Q. Thank you. And would you describe your neighborhood as
6 racially integrated?

7 A. Yes.

8 Q. Okay. What percentage would you say is approximately
9 African American?

10 A. In the community that I live in, I live in an apartment
11 community, so I would say maybe about 75 to 85 percent
12 African American, and the rest is another denomination or
13 Caucasian.

14 Q. Thank you. Do you own your own home?

15 A. No.

16 Q. How long have you lived in the district?

17 A. I've lived in the district for about 14 years, give or
18 take a few.

19 Q. And what's your education?

20 A. I have a doctorate in education, counseling psychology;
21 I have my master's in psychology; and my bachelor's is also
22 in psychology.

23 Q. And what's your occupation?

24 A. Currently I serve as the clinical director or the
25 Director of Clinical Services at St. Vincent Home for

1 Children.

2 Q. Is that a new job?

3 A. Yes, that is as of November.

4 Q. Are you currently on the School Board of the District?

5 A. Yes, I am.

6 Q. And when were you elected?

7 A. I was elected last April of 2015.

8 Q. Do you have children?

9 A. Yes, I do.

10 Q. And do they attend school in the District?

11 A. Yes.

12 Q. Have you moved since your election in April 2015?

13 A. Yes, I have.

14 Q. What motivated you to run for School Board in 2015?

15 A. There are several things that motivated me to run for
16 School Board. It started off I was attending a School Board
17 meeting and Dr. McCoy was talking about the -- we just had a
18 tornado in the area in Berkeley and they were just talking
19 about how some of the property owners left, and it was
20 talking about a lot of the financial things and how it was
21 impacting the school district. That was the first thought
22 about when I was at that School Board meeting that I wanted
23 to run.

24 Then the second reason came after the Mike Brown
25 incident. There were a lot of people out protesting. And

1 for me, I'm a little scary so I wasn't the type to go out to
2 protest. But I knew that I could do something to help my
3 community and so I decided to run.

4 And then the last thing was that I was encouraged by
5 my campaign manager to get out and run. She told me that I
6 was -- she felt that I was ready. And I believed in her,
7 so -- and I believed in myself, so that's why I decided to
8 run. And just to make sure that my children had the best
9 education possible.

10 Q. How do you believe the School Board prior to your being
11 elected responded to the situation regarding Michael Brown?

12 A. They really took the safety of our children to heart.
13 It was a little disheartening as a parent, though, because we
14 missed a lot of days. We actually missed the first week of
15 school because of the unrest in our community. But it was
16 really because of the safety.

17 Q. Can you tell me what sort of activities you engaged in
18 to get elected in 2015?

19 A. It's a long list of activities. It first started with
20 a pipeline, which was by the Shear Institute. It was like a
21 course that I took basically on how to run. From there I
22 attended various activities at the schools in the district.
23 I went to black history programs at Berkeley Middle. I
24 served pancakes at -- it was a probe event. I served
25 pancakes. It was two forums that I went to. I had

1 billboards, knocked doors. Even for my son's spring break
2 they were actually out with my campaign manager knocking
3 doors. We did robo calls. I said the billboards. We had
4 T-shirts. I had a lot of endorsements from faculty at
5 different schools, from past board members. I think that was
6 about it. Oh, I had a web page, Facebook, Twitter. I did it
7 all.

8 Q. So did you work hard to win your election?

9 A. Extremely.

10 Q. You said a minute ago that you have a campaign manager.
11 Who was your campaign manager?

12 A. It started off at the beginning Nicole McCoy, she
13 worked with me at the Salvation Army when I was working
14 there, but later on it was Judy Ferguson-Shaw.

15 Q. And why do you think people voted for you?

16 A. Because I was the best candidate.

17 Q. During your campaign was student discipline a subject
18 that was discussed?

19 A. I believe some people talked about it at one of the
20 forums.

21 Q. When candidates discussed discipline, do you believe
22 that it was actually a racial appeal for whites to vote
23 against black candidates or vice versa?

24 A. No.

25 Q. Did you use discipline as a campaign strategy?

1 A. No.

2 Q. Do you believe that student discipline is an issue, a
3 legitimate issue for a candidate for School Board?

4 A. Of course. I mean, I think it's an issue that plagues
5 our community and a lot of people are concerned about it.
6 And so if it's an issue that people are concerned about it,
7 you will make it at least some form or fashion a part of your
8 platform I would think.

9 Q. And since you've been on the Board has the Board
10 discussed discipline?

11 A. Yes, I know we talked about -- we reviewed the Code of
12 Conduct policy.

13 Q. Did you seek the endorsement from the Ferguson-
14 Florissant National Education Association?

15 A. Yes, I did.

16 Q. Did they recruit you to run for office?

17 A. No. No.

18 Q. What was the process to seek the endorsement?

19 A. We received a letter in the mail asking if you would
20 like the endorsement and for you to call. And from there you
21 will call and then they will schedule an interview, and then
22 you will go to the interview.

23 Q. And did they give you a list of questions with the
24 letter?

25 A. Yes, it was the questions that were asked actually at

1 the interview.

2 Q. And were you -- were you interviewed by a committee?

3 A. Yes, I was.

4 Q. And what was the approximate racial breakdown of that
5 committee?

6 A. I'm not exactly sure, I don't remember, but I know it
7 was a mixed group.

8 Q. Did you receive the FFNEA endorsement?

9 A. No, I did not.

10 Q. Who did?

11 A. Current School Board member Scott Ebert and Roger
12 Hines.

13 Q. And what is the race of Mr. Ebert?

14 A. Caucasian.

15 Q. And Mr. Hines?

16 A. African American.

17 Q. Do you believe that FFNEA's decision not to endorse you
18 had anything to do with your race?

19 A. No.

20 Q. Did any of the candidates tell you in 2015 that they
21 ran as a result of this lawsuit?

22 A. No.

23 Q. Did anyone tell you that they thought about running but
24 did not run for election because of this lawsuit?

25 A. No.

1 Q. Did you have voters ask you about this lawsuit when you
2 were campaigning in 2015?

3 A. No.

4 Q. Did you have voters tell you they were going to vote
5 differently because of the Michael Brown situation?

6 A. No.

7 Q. And do you know of anyone that decided not to run
8 because of Michael Brown?

9 A. No.

10 Q. Is race an important factor when you decide who to
11 support for the School Board?

12 A. No, I tend to look for the best candidate.

13 Q. Have you supported white candidates for the School
14 Board in the past?

15 A. Yes, I have.

16 Q. Have you supported African American candidates for
17 School Board?

18 A. Yes.

19 Q. Were you endorsed by any specific individuals for your
20 campaign?

21 A. Yes, I was. As I stated before, I was endorsed by past
22 School Board members, principals that I -- because I'm a
23 part of the -- I was a student in the Ferguson-Florissant
24 School District as well, so even past principals. My
25 treasurer was even my past principal.

1 Q. And who were some of the past School Board members that
2 endorsed you?

3 A. Jim Clark, Paul Schroeder, Les Lentz, Chuck Henson,
4 Doris Graham -- Dr. Doris Graham.

5 Q. And what was -- what is the race of Mr. Schroeder,
6 Clark, and Lentz?

7 A. Caucasian.

8 Q. And Henson and Graham?

9 A. African American.

10 Q. Do you remember which candidates were on the 2014 Grade
11 A for Change slate?

12 A. That was Dr. Thurman, F. Willis, Savala, Kimberly Benz,
13 and I don't know who else was running.

14 Q. So there were four candidates on the Grade A for Change
15 slate?

16 A. Oh, the Grade A for Change slate, it was just three,
17 I'm sorry.

18 Q. That's okay. And, I'm sorry, who were the Grade A for
19 Change slate candidates, do you know?

20 A. Those was Dr. Paulette-Thurman, James Savala, and F.
21 Willis.

22 Q. And who did you support in the 2014 election?

23 A. Dr. Thurman and Savala.

24 Q. Did you vote for all three seats that year or no?

25 A. Oh, yes, and then the other one was Kimberly Benz.

1 Q. And what race is Dr. Thurman?

2 A. African American.

3 Q. And Mr. Savala?

4 A. African American.

5 Q. And Ms. Benz?

6 A. Caucasian.

7 Q. Dr. Graves, do you vote?

8 A. Yes.

9 Q. Is there anything that prevents you from voting?

10 A. No.

11 Q. And you've registered to vote as well?

12 A. Correct, yes.

13 Q. Have you experienced any problems in participating in
14 the electoral process?

15 A. No.

16 Q. Okay. So what do you think of at-large elections
17 compared to smaller single member districts?

18 A. I would personally believe at-large elections are the
19 best election because it gives you the opportunity to choose
20 from a pool of candidates. And at that time you can kind of
21 weed out the ones that are not best fit for the school
22 district, and you can choose the best candidates. If we go
23 to a single district, it's almost like you get what you get,
24 whoever runs. If it's just only one person that runs, we're
25 kind of just stuck with that one person. And for our

1 district it wouldn't be best suited.

2 And if we are a district as we say we are moving to
3 a one district united, it has to be the same for our School
4 Board as well, that we are united at large. If we go into
5 the single districts, we won't be able to do that. It will
6 be people fighting for I would say our own turf or you'll
7 fight for just your one area, not the whole district united,
8 which we're moving forward to.

9 Q. What is one district united?

10 A. I've coined that slogan from our new superintendent.
11 At our back-to-school program this summer we got to do, it
12 was really neat where it's this big huge puzzle, and every
13 school piece was mentioned in the puzzle, and each person
14 even in the community got to write on a puzzle piece and it
15 all fit together as one district united. And that's
16 basically what we're moving towards where everybody gets the
17 same things, we're all teaching the same curriculum. We are
18 becoming one district united.

19 Q. Which system do you believe ensures that the entire
20 district is represented fairly?

21 A. An at-large district.

22 Q. Do you believe that the School Board represents all
23 communities within the district equally?

24 A. Yes.

25 Q. Okay. You said that you've moved since you were

1 elected last April. If the district was divided up into
2 seven smaller districts, could that have been a problem for
3 you?

4 A. Yes, because I would have to see -- I would have to
5 take out a map and I would have to figure out, okay, if I
6 move here, would I be staying -- you know, if I -- it depends
7 if I was like here, would I be in this board member's or can
8 I keep my slot if I moved here. Because I am a renter, I
9 might switch around. I mean, I know that I have the whole
10 community of Ferguson-Florissant that I can move to currently
11 the way it's set up, but if we did move to those member
12 districts, I might have to choose an area where I wouldn't
13 want to particularly stay in just to keep my seat.

14 Q. And how do you think dividing the district up into
15 seven subdistricts would affect the people that decide to
16 run, the candidate pool?

17 A. It can be anybody. If nobody is running, maybe just
18 somebody be like, "Okay, well, I just want to run." And if
19 there's not enough pool in that, we can just get anybody for
20 the district, and that wouldn't be what is best for our
21 children.

22 Q. So currently the Board members have staggered terms.
23 Do you think that's a good idea?

24 A. I think that's the best idea. Coming in as a new board
25 member you learn a lot. And it's a lot that you have to

1 learn at that same time period. And if it's all new members
2 coming in, we're going to miss something. And I know for me
3 when we're sitting at our Board meetings, I always sit and I
4 ask Rob, who has been a board member for awhile now, I'll
5 always ask him, "Okay, well, what does that mean?" You know,
6 "How do you do this or that?" And you have to learn from
7 somewhere. And it's kind of hard to get all that information
8 just going to conferences. So with the staggered terms
9 you're there with veterans basically and you learn and you
10 get mentored.

11 Q. Do you think the School Board elections should be held
12 in April or do you think another month would be better?

13 A. I think April is a good time for the elections to be
14 held. If it was say, for instance, in November during the
15 Presidential elections, the School Board I would say is very,
16 very important, and if it's during the Presidential election
17 like in November, it will get buried under basically all the
18 hype that will go on like at a November election. I think
19 April elections it gives that opportunity for School Board
20 elections to have that focus, and it can be that main
21 important focus which is needed for our schools.

22 Q. Do you know what bullet voting is?

23 A. Yes.

24 Q. What is it?

25 A. Basically bullet voting is where you choose one

1 particular candidate, if it's maybe like two slots open like
2 it was in my election, and then you put all your -- you only
3 cast one vote.

4 Q. Did you ask people to bullet vote for you as part of
5 your campaign?

6 A. Yes.

7 Q. Do you think that bullet voting is one of the reasons
8 you won?

9 A. Besides me being the best candidate, then in addition
10 to that, it helped out a lot. No offense, Scott.

11 Q. Is bullet voting something that only you can use?

12 A. No, anyone can use it.

13 Q. Since you've been on the Board have you seen the Board
14 act in any way that would treat African American students
15 differently than white students?

16 A. No.

17 Q. Do you believe the Board listens to your perspective
18 and takes it into account when it's making decisions?

19 A. Yes, I do.

20 Q. So the current superintendent was hired before you were
21 elected; is that right?

22 A. That's correct.

23 Q. Did you have any involvement in his hiring?

24 A. Not per se in his hiring, but I did attend one of the
25 forums that they had when they were down to the last two

1 candidates for that position. And so as a parent I attended
2 that event.

3 Q. What do you think of Dr. Davis?

4 A. He's awesome. I really feel that he is the
5 revitalization we need for our community, for our school.
6 And he is really passionate about what he is doing, and I
7 think that's what our School District needs, we need a jump
8 start to get us back on the right track.

9 Q. And how would you describe the Board's relationship
10 with Dr. Davis?

11 A. It's very -- we have a very open relationship. Any
12 time we call, check in, we're able to get basically the
13 things that we need done. And Dr. Davis is quick to say that
14 he has seven bosses, and we all work together.

15 Q. So do you believe the prior Board chose the best
16 candidate for the job?

17 A. Yes, I do.

18 Q. And I need to go back for just a minute. You said you
19 went to school in the district?

20 A. Yes, I started when I was in the fourth grade. I went
21 to Walnut Grove Elementary School. Then I went to Berkeley
22 Middle School. And I'm a graduate of the class of 1997 at
23 Berkeley Senior High School.

24 Q. Where are they located?

25 A. All in the Ferguson-Florissant School District.

1 MS. GABEL: That's all I have.

2 THE COURT: Any cross-examination?

3 MS. LAKIN: Yes, Your Honor.

4 THE COURT: You ready? You may proceed.

5 CROSS-EXAMINATION

6 BY MS. LAKIN:

7 Q. Good morning, Dr. Graves.

8 A. Good morning.

9 Q. My name is Sophia Lakin. I represent the Plaintiffs in
10 this case. As you may recall, we met at your deposition.
11 I'm going to ask you just a few questions.

12 You testified during your direct that one of the
13 reasons you ran for the Board was because of the Michael
14 Brown shooting and subsequent protests; is that right?

15 A. Yes.

16 Q. And it was because you were fighting for equality,
17 right?

18 A. That was one of the reasons.

19 Q. And before your election to the Board in 2015, you'd
20 agree, wouldn't you, that African Americans did not have
21 adequate representation on the Board?

22 A. I felt that the best candidates or the best people
23 wasn't on the Board in regards to -- it wouldn't just be
24 African American I would say. It needed to be candidates
25 such as myself, so that's why I ran.

1 Q. Okay. Dr. Graves, you sat for your deposition in this
2 case on July 1st, 2015, correct?

3 A. Correct.

4 Q. And you gave testimony at that time, correct?

5 A. Correct.

6 Q. And you were under oath to tell the truth?

7 A. Yes.

8 Q. Did you tell the truth?

9 A. Yes.

10 Q. I'd like to direct your attention to page 34, line 7 of
11 your deposition transcript, which is now up on the screen.

12 You were asked this question and you gave this answer:

13 "QUESTION: Now, at the time you ran, did you
14 believe that the African American community had adequate
15 representation on the Board?

16 "ANSWER: No."

17 This was the testimony you gave under oath at your
18 deposition; isn't that right?

19 A. Yes.

20 Q. In your experience as an African American you found
21 that you must be more qualified than others to get the same
22 position; isn't that right?

23 A. True.

24 Q. Now, Dr. Graves, you're aware that the Board suspended
25 the District's former superintendent, Dr. McCoy, correct?

1 A. Correct.

2 Q. And the community was upset at not knowing why the
3 Board suspended Dr. McCoy; isn't that right?

4 A. Yes.

5 Q. And you'd agree, wouldn't you, that even beyond
6 Dr. McCoy there have been times while you've been on the
7 Board when community members voiced concerns to the Board and
8 do not get a response to those concerns?

9 A. At that time when I -- during -- and you're talking
10 about during my deposition. At that time when I made that
11 statement it was during -- we were talking about people not
12 being heard in the community. And that was actually at --
13 during what I later found out is how our normal proceedings
14 go where the people in the community get a portion of time
15 where they can speak, and they get to basically voice any
16 concerns. And we don't give any feedback after that. So
17 that's when I said that people wasn't being heard, it was at
18 that time because I didn't know how the process works.

19 So what I've later found out that that's how it
20 works, that people can have any comments at the portion -- at
21 that portion of our Board meeting where they can speak. And
22 I know that at that time I'd also said that I wanted it to be
23 a way where we can possibly give that person some type of
24 feedback to know that whatever it was that they discussed
25 can -- you know, that we made some type of decision.

1 Q. And at that time during your deposition as you stated,
2 did you state whether or not individuals were getting that
3 feedback?

4 MS. GABEL: Your Honor, we're outside of the scope
5 of direct.

6 THE COURT: I'll give you some latitude on this.

7 MS. LAKIN: Thank you, Your Honor.

8 A. Can you reask that question?

9 Q. During your deposition as you've just described you
10 mentioned there were individuals who expressed concern that
11 you believed that they should be getting feedback back after
12 they expressed their concerns. At the time do you recall if
13 they were getting that feedback?

14 A. No, but I later found out that that's the way the
15 process works, and that sometimes we can send stuff back in
16 writing or add it as an agenda item.

17 Q. Okay. And you didn't really attend Board meetings
18 before you joined the Board; isn't that right?

19 A. Yes, it was very sporadic.

20 Q. As an African American resident of the district you
21 don't know one way or another whether the district has become
22 more African American in the past ten years; is that correct?

23 A. I'm not understanding the question. Can you repeat
24 that?

25 MS. GABEL: I object. Again, this is outside of the

1 scope of direct.

2 THE COURT: I'll give you some latitude on this.

3 MS. LAKIN: Thank you, Your Honor.

4 BY MS. LAKIN:

5 Q. As an African American resident of the district, you
6 don't know one way or the other whether the district has
7 become more African American in the past ten years; is that
8 right?

9 A. It has. I mean, I've not been in the district for 14
10 or 15 years. Not only did I go to school in the district but
11 I see in my kids' classrooms that the majority of the
12 students are African American. I mean, the majority of our
13 school is -- the school district is African American. I
14 believe when I was running I found some type of quote that we
15 were at least 85 percent African American. So I can see it
16 in our classrooms that the school district is predominantly
17 African American.

18 Q. And when you say "school district," you mean the
19 enrollment in the schools; is that correct?

20 A. In the classrooms.

21 Q. You testified that race isn't important to you when you
22 vote. But you'd agree, wouldn't you, that people in the
23 district tend to vote along racial lines?

24 A. I would hope that they vote for the best candidate. I
25 can't speak to what other people vote for.

1 Q. Can we go to your deposition, page 48, line 11. You
2 can sort of see it already here. On line 11 the question is:

3 "QUESTION: Do you think people tend to vote along
4 racial lines in the FFSD?

5 ANSWER: Yes."

6 This was the testimony you gave under oath at your
7 deposition; isn't that right?

8 A. Yes.

9 Q. This lawsuit was discussed on a radio show after
10 your -- sometime in late January, early February last year,
11 right?

12 MS. GABEL: Your Honor, I object, outside of the
13 scope.

14 THE COURT: Sustained.

15 MS. LAKIN: Your Honor, she discussed during the
16 direct that no one mentioned the lawsuit.

17 THE COURT: I'll give you some latitude upon
18 recollection that there was some discussion about the lawsuit
19 not having any impact on last year's election. You may
20 proceed.

21 MS. LAKIN: Thank you.

22 BY MS. LAKIN:

23 Q. This lawsuit was discussed on a radio show in late
24 January or early February of last year; is that right?

25 A. What radio show?

1 Q. A talk radio panel on which you were a panelist.

2 A. Yes, it was.

3 Q. You testified a little about the 2014 campaign. You
4 don't recall whether race was an implicit part of the 2014
5 Board campaign, right?

6 A. I'm not understanding your question.

7 Q. During the 2014 campaign did you -- you do not remember
8 one way or the other whether race was an implicit part of
9 that campaign; is that right?

10 A. I'm not understanding what you mean by that question.

11 Q. Did campaigns -- you don't recall whether campaigns
12 used any subtle racial appeals during the campaign one way or
13 the other?

14 A. No, I don't think race was an issue.

15 Q. And you aren't aware that there are disparities in the
16 use of discipline in the district; is that right?

17 A. No.

18 Q. No, it's not right or no, you're not aware?

19 MS. GABEL: Again, Your Honor, we didn't discuss
20 this on direct.

21 THE COURT: There was some discussion about
22 discipline. You may proceed.

23 A. I'm not aware.

24 Q. And you testified that you encouraged others to bullet
25 vote in your election?

1 A. Yes.

2 Q. And you haven't bullet voted in any other School Board
3 election; isn't that right?

4 A. That's correct.

5 MS. LAKIN: Just a moment, Your Honor. No further
6 questions. Thank you.

7 THE COURT: Thank you. Any redirect? Are you ready
8 on the Plaintiffs' side? You may proceed.

9 REDIRECT EXAMINATION

10 BY MS. GABEL:

11 Q. Dr. Graves, had you thought about running for the
12 School Board prior to the events involving Michael Brown?

13 A. Yes, I did.

14 Q. When was that?

15 A. Like I said at the beginning of my testimony, when I
16 was at a prior board meeting and Dr. McCoy was talking about
17 the issues in regards to people leaving the district due to
18 the tornado.

19 Q. Okay. And let's look back at your deposition. This
20 is the page that you were just shown. And you were asked,
21 line 7:

22 "Now, at the time that you ran, did you believe that
23 the African American community had adequate representation on
24 the Board?" And you answered, "No." "And is that part of
25 the reason you ran for the Board?" And you answered?

1 A. "No."

2 Q. Is that correct?

3 A. Yes.

4 Q. Do you believe that there is sufficient representation
5 for the African American community?

6 MS. LAKIN: Objection, Your Honor. She's impeaching
7 her own witness.

8 THE COURT: She's not, she's making it complete from
9 your cross-examination.

10 BY MS. GABEL:

11 Q. I'd just like to make sure we get the entire testimony
12 that you said from your deposition just to give, like the
13 Judge said, a complete picture.

14 So you were asked, "Do you believe that there is
15 sufficient representation for the African American community
16 on the Board now?" Did you say, "I would say for the makeup
17 of the Board it doesn't matter what race it is. It should be
18 people who are best qualified"?

19 A. Yes, and that's what I continue to say.

20 MS. GABEL: That's all I have.

21 THE COURT: Thank you, ma'am. You may step down.

22 THE WITNESS: Thank you.

23 THE COURT: I appreciate your time. Anything
24 further on behalf of the Defendants?

25 MS. ORMSBY: I'm sorry, Your Honor?

1 THE COURT: Anything further on behalf of the
2 Defendants?

3 MS. ORMSBY: No, Your Honor. We rest.

4 THE COURT: Does the Election Board elect to put on
5 any evidence?

6 MS. FORSTER: No, Your Honor, not at this time.

7 THE COURT: Yes, Mr. Rothert.

8 MR. ROTHERT: We have no rebuttal witnesses.

9 THE COURT: Very good. All right. The evidence
10 is -- we'll proceed to closing. I was going to say the
11 evidence is complete, but I know better than just to assume I
12 know everything is complete in this case.

13 So we'll take a 20-minute recess, let everybody
14 organize themselves, think about what happened rather than
15 just rush into it. So we'll proceed with closing arguments
16 at 10:35. Thank you very much.

17 (Court in recess from 10:14 a.m. until 10:45 a.m.)

18 THE COURT: Ready for closing arguments? Who is
19 going to proceed on behalf of the Plaintiffs?

20 MS. EBENSTEIN: I am.

21 THE COURT: Very good.

22 MS. EBENSTEIN: Good morning.

23 THE COURT: You have a play-by-play binder. Thanks.

24 MS. EBENSTEIN: Julie Ebenstein on behalf of
25 Plaintiffs. I will explain the presence of evidence about

1 the preconditions and then Mr. Rothert is going to review the
2 senate factors and the totality of circumstances.

3 THE COURT: Great.

4 MS. EBENSTEIN: Before I start with the *Gingles*
5 preconditions, I just wanted to remind the Court of three
6 factors that underlie all Section 2 claims.

7 First, that Section 2 only requires Plaintiffs to
8 show -- to prove that the process for electing School Board
9 members has discriminatory results. Plaintiffs' claim is not
10 premised on intentional discrimination and Plaintiffs have
11 not discussed the intent of the Board or any other
12 institution or party in the school district. Merely a
13 showing of results can satisfy Section 2.

14 The second is that the Court needs to engage in a
15 functional analysis of what actually happens in the district,
16 not a hypothetical of what could happen.

17 And third is that the protections of Section 2 are
18 broad to protect against racial discrimination.

19 Going through the *Gingles* factors one by one and
20 beginning with *Gingles I*. *Gingles I* requires Plaintiff to
21 show that the African American population in the school
22 district is sufficiently large and geographically compact to
23 constitute a majority in a single member district.
24 Plaintiffs have clearly satisfied that requirement with their
25 two illustrative plans. Those plans have a majority in four

1 of the seven districts, including a majority of over
2 60 percent in three out of the seven.

3 The illustrative plans comply with the
4 constitutional requirements of one person, one vote and with
5 the four principles of redistricting. They are compact and
6 contiguous according to their reorg scores and what's called
7 the eyeball test. They minimize splits between precincts and
8 census blocks. They keep communities of interest together
9 and they adhere to the state requirements of compact and
10 contiguous districts.

11 The *Gingles I* requirement or the *Gingles I* standard
12 should end there as Plaintiffs have satisfied it. But since
13 the Defendants have raised some additional arguments related
14 to the size of the black voting age population in the
15 district, I'm going to address those as part of *Gingles I*.

16 Again, the requirements are straightforward and
17 simply through our illustrative plans we've satisfied the
18 requirements already.

19 Plaintiffs' claim seems to be that -- I'm sorry,
20 Defendants' claim seems to be that Plaintiffs have not
21 satisfied *Gingles I* based on their projections of the black
22 voting age population, which they believe is higher than
23 50 percent in the district.

24 This claim fails for two reasons. First of all,
25 there is no supportable evidence that the black voting age

1 population is, in fact, over 50 percent of the district.
2 And, second, even if it were, that does not prohibit
3 Plaintiffs' claim, especially given the amount of racial
4 disparities that we've shown are present.

5 As far as the Defendants not being able to support
6 their argument that the black voting age population is over
7 50 percent, the reason is primarily the census data. The
8 census data is presumptively accurate. It's used by Missouri
9 state law to determine the population for purposes of
10 representation. It's used by Eighth Circuit courts in
11 adjudicating Section 2 claims. And, like I said, as a
12 standard it's presumptively accurate, a presumption that
13 Defendants have not overcome.

14 Defendants have put forward two sets of numbers to
15 try to overcome the strong presumption that census data is
16 accurate. One is the ACS data and the other are projections
17 created by their expert.

18 As far as the ACS data, you heard testimony from
19 Dr. Gordon that the ACS data is first only a 2 percent survey
20 of the population, so it's not a full population count the
21 way that the census is. Two, it's appropriately -- according
22 to the Census Bureau, it's appropriately used for
23 socioeconomic comparisons and determinations, not for
24 population comparisons and determinations.

25 And he gave an example of some of the shortcomings

1 of ACS. For example, he showed that in St. Louis using the
2 2006 to 2009 ACS data there was an assumption that the
3 population would increase by 2 percent. When the 2010 census
4 data came out for the City of St. Louis, in fact, the
5 population had decreased by 8 percent. So the ACS data is in
6 many ways imperfect and can be unreliable. And the census
7 acknowledges that by including ACS data with a margin of
8 error.

9 The margin of error -- the Defendants in this case
10 haven't established that the ACS data, the margin of error
11 for the ACS data, the confidence interval, is outside of the
12 census numbers.

13 So, for instance, going from the census data to the
14 ACS data, the difference in the black voting age population
15 is only 283 people if you look at single race black, or 528
16 people if you look at Dr. Rodden's projections for any part
17 black. The confidence interval for the -- or the margin of
18 error for the ACS numbers is, in fact, 2,458 people for the
19 population overall, and would likely be a larger percent of a
20 voting age population determination since that's a smaller
21 sample and a smaller number. So Defendants have not overcome
22 this presumption that the total count of the population
23 should be the count that's used.

24 As far as Dr. Rodden's projected estimates for where
25 the current population stands, there is a number of reasons

1 that they should not be relied upon. First, again, there's a
2 small sample for ACS, which does not give the age breakdown
3 for those who report having two or more races. Dr. Rodden
4 has made an estimate of which part of that census category or
5 that ACS category is any part black and incorporated that
6 into his estimates or projections without reporting the
7 margin of error.

8 He doesn't include a margin of error in any part of
9 his projections, so unlike the ACS, we cannot even determine
10 how accurate or inaccurate those projections might be.

11 And there are other small consistencies --
12 inconsistencies, again, at the margins. For instance, in
13 Dr. Cooper's report he explains that the Board of Elections'
14 designation of the district is slightly different than the
15 Census Bureau's designation. It's only a few hundred people,
16 but, again, as Defendants are arguing that we're a few people
17 above the 50 percent line, those small changes become even
18 more significant.

19 Now, for a few reasons even if the voting age
20 population were above 50 percent, that wouldn't preclude
21 Plaintiffs' claim. Vote dilution claims are not prohibited
22 simply because there's a numerical majority. Black voters in
23 the district still can lack real opportunities to elect
24 candidates of their choice. And I believe in the last week
25 we've shown a lot of examples of that. Three circuit courts

1 have looked at this issue of whether or not there's a per se
2 bar, and all have determined that a population above
3 50 percent does not --

4 THE COURT: I assume you're not including the Ninth
5 Circuit, right?

6 MS. EBENSTEIN: No, not including the Ninth Circuit.
7 The Fourth, Eleventh, and Second Circuit have determined, and
8 the Ninth Circuit has cited it in a footnote, that having
9 more than 50 percent population does not preclude this sort
10 of claim. And, in fact, in the Fifth Circuit one of those
11 cases looked not at the population but at the registered
12 voter population. So it already implicitly took into account
13 some of the other barriers that might come up.

14 Those barriers that may come up, and I think that
15 Fifth Circuit case is significant because in FFSD the
16 50 percent mark is even less significant due to some of the
17 other considerations that have come out over the course of
18 the trial. First is that turnout in FFSD is lower for black
19 residents than for white residents. Dr. Kimball did an
20 analysis that showed a lower level of turnout among black
21 residents. And Dr. Rodden's own analysis showed that in 11
22 out of 12 elections that he analyzed, the turnout was either
23 lower -- the black turnout was either lower or equal to the
24 white turnout. Only in one of those 12 elections did he
25 determine that the estimate of the black turnout was, in

1 fact, higher.

2 And those numbers have some -- there are some
3 additional considerations with those numbers. First of all,
4 we know at least in the state as a whole that the black
5 registration rate is lower than the white registration rate.
6 For black residents the registration rate is 67.1 percent,
7 and for white residents it's 72.2 percent. Dr. Rodden
8 determined turnout as the number of people who cast a ballot
9 over the number who are registered in the district. So his
10 numbers actually may overcount the turnout among black voters
11 since they don't consider the differential in registration
12 rates.

13 On top of that Dr. Gordon testified that due to
14 disparities in felon disenfranchisement, specifically of the
15 100,000 people who are on some sort of oversight, prison
16 oversight, 60,000 or so of them are on probation and parole
17 living in their home community. As is generally
18 acknowledged, felony convictions and the loss of voting
19 rights related to felony convictions impacts black voters and
20 residents more harshly than it does white voters and
21 residents.

22 So for those three reasons, even if black voters had
23 crossed the 50 percent line, they don't have the same
24 electoral opportunities as white voters may have.

25 Another issue that Defendants brought up in terms of

1 *Gingles I* was that Plaintiffs have not shown how effective
2 our illustrative plans are. Again, that's not a requirement
3 of *Gingles I*, but we did produce evidence from Dr. Gordon --
4 or first off, Mr. Cooper's plans show over 60 percent black
5 voting age population in three of the seven districts, over
6 50 percent in one of the seven districts. So in four
7 districts there's a majority and a greater or much greater
8 majority than what Defendants claim there is in the at-large
9 district overall. If nothing else the single member
10 districts based on that showing population-wise would be more
11 effective.

12 The second Defendants' analysis of effectiveness in
13 their response to Dr. Cooper is in many ways unreliable. It
14 assumes that black candidates are candidates of choice when
15 it counts up how many people would win under Dr. Cooper's
16 illustrative plans versus the current at-large district. And
17 it doesn't consider the differential in each of those
18 districts and the security with which a candidate could be
19 successful.

20 Again, the *Gingles I* is clearly satisfied. But in
21 terms of those two arguments Plaintiffs have shown that they
22 are either not relevant or have shown that they fail based on
23 the facts that we've presented.

24 Coming to *Gingle II* --

25 THE COURT: Well, let's stop a second. I asked

1 Dr. Kimball myself that given all these factors,
2 disenfranchisement, at-will voter registration rates, at what
3 percentage of the voting age population the African American
4 population would need to be before we knew they could
5 exercise the majority just as a matter of course. And he
6 said he didn't know. What do I do with that?

7 MS. EBENSTEIN: Well, I know that he hasn't made
8 that calculation, and there's generally not a single
9 numerical threshold.

10 THE COURT: No, but you could take out the
11 difference in registration and the estimate of
12 disenfranchisement and extrapolate that across the voting age
13 population and make a determination as to what percentage of
14 the voting age population African Americans would need to be
15 before you completely believe the playing field was level.
16 Right?

17 MS. EBENSTEIN: Yes.

18 THE COURT: But nobody has done that.

19 MS. EBENSTEIN: No, I think during the remedial
20 phase if there are different plans proposed, effectiveness
21 would be a part of it. And either calculating, maybe not one
22 given percentage that could carry across other school
23 districts, but certainly calculating or explaining to you the
24 factors in FFSD that would lead to an effective district and
25 where that number would be would all be done at the remedial

1 stage.

2 Courts have at different points used a 60 or 65
3 percent number. But, again, it makes more sense at the
4 remedial stage to factor in the specifics of the FFSD when
5 making that determination.

6 As far as *Gingles II*, we've shown throughout the
7 week that black and white voters have divergent preferences
8 as to who they want to represent them on the school board.
9 And when you consider that in the face of racial disparities
10 in the district, it's prevented African American voters from
11 having an equal opportunity to elect their candidates of
12 choice.

13 *Gingles II* requires that voting is racially
14 polarized, which put simply means black and white voters vote
15 differently. And *Gingles III* requires that candidates
16 preferred by black voters usually lose. We've shown both of
17 these things, primarily through Dr. Engstrom's testimony.

18 First, it's important to consider which elections
19 are probative in making these considerations. And both
20 courts in the Eighth Circuit and the explanation of the
21 witnesses have shown that recent endogenous and interracial
22 elections are the most probative in highlighting the patterns
23 among voters and whether or not they vote differently from
24 voters of another race.

25 There has been according to Dr. Engstrom a

1 consistent relationship between the race of the voter and the
2 candidates they choose. In this particular instance the
3 candidates of choice have primarily been African American and
4 have been African American since 2011. However, black voters
5 could certainly prefer any candidate that they wish. The
6 question is based on these EI estimates who they've shown
7 that they do prefer in the school district.

8 For that reason the difference in voting patterns
9 between black and white voters, racial -- voting in the
10 district for School Board is racially polarized. There's a
11 consistent relationship between race of the voter and the way
12 they vote, and black and white voters vote differently.

13 To move on to *Gingles III*, *Gingles III* is met where
14 the white majority vote sufficiently as a block to enable it
15 in the absence of special circumstances, usually to defeat
16 the minority preferred candidate. And as the case *Bone Shirt*
17 lays out, that's determined through three inquiries: One,
18 identifying the minority preferred candidate; two,
19 determining whether the white majority votes has a block to
20 defeat that candidate; and, three, determining whether there
21 are any special circumstances.

22 Now, the parties have put forward a number of
23 different methods for identifying the candidate of choice,
24 and Plaintiffs satisfied *Gingles III* under any of those three
25 determinations. The case-by-case approach that Plaintiffs

1 have put forward is the legally appropriate approach to take.
2 There is no -- as courts have held, there's no blanket
3 definition of minority preferred candidate, it is a
4 determination made on an election-by-election basis. And it
5 typically requires both a statistical and a nonstatistical
6 analysis.

7 Dr. Engstrom identified eight candidates of choice
8 since 2011, and he did that based on three principles:
9 First, candidates' level of support must be statistically
10 significantly higher than a candidate who is not a preferred
11 candidate. So, for instance, if we identify choice of
12 preference No. 1 as a candidate of choice and you can tell
13 that there is a statistically significant difference between
14 them and the next preferred candidate, that next preferred
15 candidate should not be considered a candidate of choice.

16 Another consideration Dr. Engstrom made was that
17 those considered a candidate of choice had a substantially
18 higher level of support. So we don't just say that anyone
19 who is in the top end number of seats that are up for
20 election becomes a candidate of choice, we have to actually
21 look at the numbers. Part of the reason for that, as he
22 explained, is that black voters or any voters are not
23 required to prefer as many candidates as there are seats in
24 the election, which is why this case-by-case approach is so
25 important.

1 The third principle that Dr. Engstrom explained is
2 that voters should have an opportunity to elect candidates
3 from within their own racial group if they show a preference
4 for candidates within their own racial group. So courts
5 should be skeptical of attempts to characterize a second
6 choice winning white candidate as a candidate of choice when
7 the first choice clear preferred candidate is an African
8 American candidate. Based on Defendants' method for counting
9 candidates of choice, there's certainly a pattern of adding
10 the identification of white lesser preferred candidates as --
11 to count as a success among black voters, when black voters
12 have actually shown a strong preference towards voting within
13 their racial group.

14 Next white voters usually vote as a block to defeat
15 the black preferred candidates. And, again, Dr. Engstrom
16 showed eight candidates that he identified as candidates of
17 choice, only two of whom were elected. The percentage of
18 black preferred candidates who are successful is, in fact,
19 decreasing. Only seven out of the 19 preferred -- black
20 preferred candidates in contested elections were successful
21 since 2000 as compared to 19 of 20 white preferred
22 candidates. In the past five -- in the past decade, four of
23 12 black preferred candidates were elected. And then in the
24 past five years that Dr. Engstrom analyzed only two of eight
25 black preferred candidates were elected.

1 THE COURT: But the two were in the last two
2 elections.

3 MS. EBENSTEIN: Right, which brings us to special
4 circumstances that have affected the lasts two elections.
5 But I just wanted to mention one more thing, which is that
6 there does not need to be a showing of no crossover voting at
7 all. You don't need perfect polarization between black and
8 white voters such that not a single white candidate votes --
9 excuse me, a white voter votes for a black candidate. There
10 simply needs to be sufficient lack of white crossover voting
11 or white voting as a block to usually defeat the black
12 preferred candidate.

13 And I also just wanted to note the possibility
14 that's come up of single shop voting. Straightforwardly
15 it's -- if black voters are required to give up half of their
16 voting rights and single shot vote in order to elect their
17 candidates of choice when white voters are not, certainly
18 that's not an equal opportunity to participate, first of all.
19 Second of all, even when black voters have done that, for
20 example, in the 2012 election, it was ineffective, the two
21 white candidates were still elected over black voter single
22 shot choice of a candidate.

23 And then as far as the 2015 election, there are
24 special circumstances present, the first of which is commonly
25 recognized in Section 2 cases, which is that it's a

1 post-litigation election. That can change both who runs for
2 office, the candidate pool, and the voting patterns.

3 Dr. Engstrom said in his report in his roughly 40 years as an
4 expert he doesn't recall a post-litigation election that
5 departed as dramatically from previous elections.

6 Now, Defendants have presented the recent success of
7 two black candidates as a shift attributable to the addition
8 of a few hundred -- or not even addition, addition of a few
9 hundred black residents into the pool of the voting age
10 population in the district. That doesn't quite make sense.
11 The fact that a few people may have turned 18 among the black
12 population or that some people, 18-year-olds or others may
13 have left from among the white population doesn't account for
14 this vast dramatic change in the voting behavior.

15 More likely it's two things; a post-litigation
16 election and the events of the summer of 2014, the shooting
17 of Michael Brown, which very much brought national attention
18 and a number of other changes that haven't been seen before
19 into the school district. Because of those special
20 circumstances, the election is not an indication of the usual
21 patterns in the district and should be discounted as less
22 probative.

23 If you don't have any questions, I'll have my
24 colleague --

25 THE COURT: I'll save them to the end out of

1 fairness to your presentation.

2 MS. EBENSTEIN: All right. Thank you.

3 THE COURT: Mr. Rothert.

4 MR. ROTHERT: Good morning, Your Honor. I'm going
5 to talk about the Senate Factors, there are only nine and I
6 have 15 minutes, so no problem.

7 THE COURT: Don't talk so fast we don't have a
8 record, okay.

9 MR. ROTHERT: I'll annunciate. After establishing
10 the *Gingles* preconditions, the Court turns to the -- to see
11 the totality of the circumstances on the ground. And as the
12 Eighth Circuit notice in the en banc *Blytheville* case,
13 satisfying --

14 THE COURT: That's *Blytheville*.

15 MR. ROTHERT: *Blytheville*.

16 THE COURT: *Blytheville*, Arkansas.

17 MR. ROTHERT: It is Arkansas for sure. Satisfying
18 the preconditions from *Gingles* takes us a long way toward
19 showing a Section 2 violation.

20 So there are nine Senate Factors that are in the
21 Senate report that accompanied the 1982 amendments to the
22 Voting Rights Act. We don't have to prove any set number or
23 even a majority.

24 I'll start by talking about Factors 2 and 7. And
25 that might be a pinch confusing to talk about two and seven,

1 but they are the predominant factors, and according to
2 *Gingles* when they are present the other factors aren't
3 essential.

4 Senate Factor 2 is looking for a relationship
5 between the race of the voter and the way in which voters --
6 the voter votes. So Dr. Kimball, Dr. Engstrom, Dr. Rodden
7 each provided evidence of a consistent relationship between
8 the way African Americans on the one hand vote and white
9 voters on the other hand, how they vote.

10 Dr. Kimball's -- or, I'm sorry, Dr. Engstrom's
11 case-by-case analysis found an overlap of about 10 percent
12 overlap in voting. Dr. Rodden's top choice analysis found
13 0 percent overlap. And even Dr. Rodden's questionable
14 district point estimate approach found overlap only about a
15 third of the time.

16 In addition to these experts who examined the data
17 and showed very little overlap in how black voters vote and
18 how white voters vote, the fact witnesses, all of the fact
19 witnesses testified that African American voters vote for
20 different candidates than white voters.

21 Senate Factor 7 looks at the extent to which African
22 American candidates win school board elections. *Gingles*
23 again explained that this doesn't take -- mean a complete
24 lack of success. And as Dr. Kimball testified, this is not a
25 close call. White candidates have a much higher rate of

1 success than African American candidates. There's a slide
2 here that explains it, but the success rate for white
3 candidates is about 70 percent, for black candidates it's
4 about 11 percent. Not a close call at all.

5 So if you look at the chart on the next slide, the
6 experts on -- it shows in the last 12 contested elections
7 four times as many candidates win and white candidates have
8 three times the success rate of African American candidates.
9 And that's roughly -- I mean, we talked about how terrible it
10 is that in Ferguson African Americans are three times as more
11 likely to be pulled over by the police. Well, here white
12 candidates are three times as more likely to win than African
13 Americans.

14 And experts on both sides talked about the power of
15 incumbency and how important that is in elections like school
16 board elections. But since 2006 no African American
17 incumbent has won reelection; although in the same period
18 there have been white incumbents who have won reelection.

19 So African Americans usually lose. White candidates
20 usually win. And in Senate Factor 7 we're looking at the
21 race of the candidate. So Senate Factor 7 is established.

22 I was going to talk about Senate Factor 1 and 5
23 together because many courts discuss them together, or back
24 to back anyhow. Because as in this case they often go hand
25 in hand. So Senate Factor 1 is the history of discrimination

1 that touches on voting. And Senate Factor 5 is whether
2 minorities in the jurisdiction bear the effects of past
3 discrimination.

4 For Senate Factor 1, Plaintiffs have shown a history
5 of discrimination that has touched on the right of African
6 Americans to participate in the political process. The
7 Eighth Circuit reminds district courts that they should
8 recognize the historic effects of discrimination in areas
9 like employment and education and how that impacts negatively
10 on minority political participation.

11 In this case Plaintiffs have shown a history of
12 racial discrimination affecting residents of the district.
13 It starts explicitly with Missouri law when it was the policy
14 of the State not to allow African Americans to vote. But it
15 also comes up in education, and in this very school district
16 that we're talking about where racial segregation was
17 maintained as a matter of policy even 20 years after *Brown v.*
18 *Board of Education*.

19 It's also present in housing. Dr. Colin Gordon
20 testified about how housing and segregation in housing is the
21 chief driver of socioeconomic disparities by race and how
22 those persist today.

23 As Senate Factor 5 requires, Plaintiffs have shown
24 that African Americans in the school district bear the
25 effects of historical discrimination. There are a lot of

1 racial disparities. The OCR, Office of Civil Rights, data on
2 disciplinary disparities based on race is in Exhibits 85, 86,
3 and 93.

4 The OCR data reported by the Board on gaps in
5 achievements based on race are at Exhibits 84 and 93.
6 Dr. Kimball testified about the disparities in treatment of
7 law enforcement, income, employment, education. And
8 Dr. Gordon provided the table that's on this slide showing
9 how the disparities are in the metro area as a whole, in the
10 district where they are even worse, and in the census blocks
11 that are majority African American. And you can see for
12 almost every category looked at, each metric looked at,
13 African Americans are worse off. And Dr. Kimball explained
14 how the socioeconomic disparities, the lack of socioeconomic
15 well-being increased the cost of voting which in turn dampens
16 the political participation. And that's what Senate Factor 5
17 requires Plaintiffs to show.

18 And, again, this is important. We've said it a few
19 times, but Section 2 looks at how electoral processes and
20 laws, how they interact with socioeconomic realities on the
21 ground and with history to cause inequity and opportunity.
22 So, again, we don't have to show purpose and we certainly
23 don't have to show purpose of the current regime. We just
24 have to show that there's a history of discrimination and
25 that there are lingering effects of that discrimination that

1 have the effect of creating an unequal opportunity to select
2 a preferred representative.

3 The rest of the factors I'll take in order. Senate
4 Factor 3 examines whether election practices and procedures
5 tend to enhance the opportunity for discrimination.

6 Dr. Kimball explained how at-large, staggered, and off-cycle
7 features of the district's elections enhance the opportunity
8 for discrimination. And his conclusion should not be
9 surprising because courts, including the Supreme Court, have
10 found such procedures enhance discrimination.

11 Which to change, to get rid of the inequities or how
12 to change or, you know, different ways of dealing with
13 districts, subdistricts, there could be a hybrid, whether to
14 address all three of these, parts of them, and how to address
15 them is a question of remedy. And we're certainly not going
16 to ask you to change every feature of Ferguson-Florissant
17 School District elections, but for Senate Factor 3 it
18 suffices that there are these features that exist, and the
19 proof is that they do tend to enhance the opportunity for
20 discrimination.

21 Senate Factor 4 involves denial of access of
22 minorities to well established slating processes.

23 THE COURT: This goes to -- is the definition of
24 "slating" recruiting candidates?

25 MR. ROTHERT: It is not. According to the Second

1 Circuit, I believe Second Circuit -- Fourth Circuit --
2 according to the Fourth Circuit the Supreme Court has viewed
3 slating as essentially involving the endorsement of
4 candidates. And described -- the Eastern District of
5 Missouri, a court here has said that -- the court has
6 described slating as a group of individuals who run as a
7 block. So we don't believe it's necessary that there be
8 recruitment.

9 THE COURT: Well, if the NEA interviews all the
10 candidates and endorses some, that doesn't mean they are
11 running as a block. I mean, we heard a lot about the NEA
12 endorsement, a little bit about North County labor, but I
13 didn't hear anybody then running as a block. That's a little
14 different.

15 MR. ROTHERT: The evidence was that they have shared
16 materials and shared resources.

17 THE COURT: We heard about candidates running as a
18 block, but I never heard it really with the NEA.

19 MR. ROTHERT: Again, this is an area where we don't
20 have to show purposeful exclusion of African Americans. And,
21 you know, I don't believe that there is a purposeful
22 exclusion of African Americans, but just the results. And
23 the results are that it matters to be endorsed by the FFNEA
24 or North County Labor Club because the endorsees almost
25 always win. And the endorsees are also almost never black.

1 THE COURT: But you got two counterintuitive
2 moments. The president of the FFNEA was an African American
3 most recently.

4 MR. ROTHERT: Right.

5 THE COURT: And they endorsed an African American
6 last election who lost when another African American won. If
7 this was a TV screen I'd say it's pretty scrambled as to what
8 the effect is here and what we're dealing with.

9 MR. ROTHERT: Well, the effect overall is FFNEA
10 endorsees, the last 14, 11 have won. And the ones who
11 haven't have been African American, all of them. So it makes
12 a difference whether or not you get the FFNEA endorsement, at
13 least if you're white. And you usually are if you've --

14 THE COURT: But in the last election an African
15 American won who wasn't endorsed by the FFNEA.

16 MR. ROTHERT: That is true.

17 THE COURT: An African American endorsed by the
18 FFNEA wasn't elected.

19 MR. ROTHERT: Right. And it's important I think to
20 note that the African American who was endorsed was not a
21 black preferred candidate.

22 THE COURT: Well, by definition, since they didn't
23 win.

24 MR. ROTHERT: Well, if they both would have won,
25 they could have both been black preferred. But he didn't --

1 he also did not get support from the African American
2 community.

3 The North County Labor Club shows the similar
4 outcome, 12 white endorsees, one African American. The
5 African American loses. All 11 of the 12 white endorsees
6 wins. So it makes a difference. It makes a difference to
7 get the endorsement.

8 Senate Factor 6 is the use of overt and subtle
9 racial appeals. You heard credible testimony from several
10 fact witnesses who said they understood, they heard, and they
11 understood subtle racial appeals that were made. The
12 district chose not to call a single one of its white Board
13 members to testify that those witnesses were incorrect.

14 Senate Factor 8 is proved by providing evidence that
15 elected officials are unresponsive to the needs of African
16 Americans. Again, each fact witness, no matter who called
17 by, testified about a lack of responsiveness by the district.
18 And, again, no white Board members were called to testify or
19 respond to the claim that the Board has not been responsive.
20 And that's not surprising because in their deposition
21 designations many Board members are wholly unaware that the
22 African American community has particularized needs, much
23 less what they are. The Board is the policy maker for the
24 district. But unlike Hazelwood and Jennings, it hasn't
25 engaged in policy initiatives to address the achievement gap.

1 And unlike the board for the St. Louis Public
2 Schools, it hasn't undertaken an initiative to address racial
3 disparities in discipline. They've just talked about it.
4 And Mr. Green testified that disciplinary policies are varied
5 by building, which allows the disparities to grow greater.

6 And there's the testimony about the suspension of
7 Dr. McCoy. You learned from Mr. Morris's deposition that it
8 was over a hiring decision. The community cried out
9 literally for an explanation.

10 THE COURT: Let's be honest, this Dr. McCoy piece is
11 really difficult for me.

12 MR. ROTHERT: Yes.

13 THE COURT: Because Dr. McCoy signed -- wouldn't
14 allow the School District to release the reasons for which he
15 agreed -- he was suspended. What do I do with that? All I
16 have is speculation.

17 MR. ROTHERT: Well, there is no evidence of that.

18 THE COURT: There is no evidence of why he resigned.

19 MR. ROTHERT: Well, right.

20 THE COURT: There is no hard evidence. There is
21 people saying they think or they saw or they heard.

22 MR. ROTHERT: Okay.

23 THE COURT: And I have Dr. McCoy apparently saying I
24 do not for whatever reason want the world to know why I'm
25 resigning.

1 MR. ROTHERT: Well, we've --

2 THE COURT: What do I do with that?

3 MR. ROTHERT: Well, we've tried not to focus. We're
4 not talking about the resignation.

5 THE COURT: All your witnesses talked about
6 Dr. McCoy.

7 MR. ROTHERT: Yes, they did, but they are not
8 talking about the resignation, they are talking about the
9 suspension that happened five months later.

10 THE COURT: He was suspended and then resigned, but
11 refused to allow the School District to say why. So that's
12 almost like hitting somebody with their hand tied behind
13 their back. Help me out. I'm not telling you I want to
14 disregard it, but tell me how I handle that.

15 MR. ROTHERT: Well, Dr. McCoy, the only thing that
16 he asked to be confidential were the reasons for his
17 resignation and the charges that were filed, and that came
18 four months later and it was very different than the reason
19 why he was suspended.

20 THE COURT: How do I know that? Because it's a
21 secret. How do I know that? I've got to take your word.

22 MR. ROTHERT: It's not a secret.

23 THE COURT: Well, he said he didn't want it
24 disclosed, so how do I know it's different.

25 MR. ROTHERT: He never said he didn't want the

1 suspension information disclosed. And we know --

2 THE COURT: Assuming then how do I know that the
3 suspension and resignation were for different reasons if we
4 don't know why he resigned?

5 MR. ROTHERT: It's in the deposition designations of
6 the Board members including Mr. Morris who told you why he
7 was suspended, which was a hiring decision. And they tell us
8 that. And they us they can't tell us the reason for the
9 charges. So --

10 THE COURT: So how do we know they are not the same
11 if we don't know what it was?

12 MR. ROTHERT: Well, because they are not allowed to
13 tell us the reasons for the dismissal or the charges.

14 THE COURT: I'm asking your help.

15 MR. ROTHERT: Yes.

16 THE COURT: What do I do with that if I don't know?
17 If it's an empty set as to why he resigned, but you want to
18 use as an example of how the district is unresponsive, how do
19 I know that that's fact?

20 MR. ROTHERT: Well, no matter what the reason, what
21 is significant is that the Board for whatever reason chose
22 not to give any explanation to the public for the suspension.
23 And the public is asking for it. And maybe -- and whether or
24 not it's reasonable for the Board to do that or not, you
25 know, that is -- that could be a legitimate question. But as

1 far as the public -- that being a need of the public to know
2 that and the choice not to give it to them is a decision that
3 the Board made. And it doesn't matter ultimately why he was
4 suspended or what the reason was, but especially when as all
5 the witnesses testified, the feeling and the word in the
6 community was that it was because of race. To respond to
7 that with silence and to choose not to give an explanation
8 allows that to fester and allows that to grow and it shows
9 unresponsiveness to that concern.

10 THE COURT: So that's the piece I should take from
11 it?

12 MR. ROTHERT: Yes.

13 THE COURT: All right.

14 MR. ROTHERT: All right. And I'm just saying today,
15 you know, we heard from Dr. Graves that, you know, before she
16 was on the Board she thought the Board was nonresponsive to
17 the concerns, that they didn't respond, and now that she's on
18 the Board she learned that's how it works, they don't respond
19 to the --

20 THE COURT: She was talking about the public comment
21 period before a Board meeting.

22 MR. ROTHERT: Right.

23 THE COURT: She didn't say the Board doesn't respond
24 to community interest.

25 MR. ROTHERT: I'm sorry.

1 THE COURT: She said that she understood now --

2 MR. ROTHERT: They don't respond to the comments.

3 THE COURT: -- that at board meetings there's a
4 public comment period, and it's not their practice to engage
5 in a discussion with the public when they are making a
6 comment. That's a total -- you're extrapolating a procedure
7 at a Board meeting --

8 MR. ROTHERT: I'm not trying to extrapolate.

9 THE COURT: -- to a philosophy of the Board, and
10 those are entirely different issues.

11 MR. ROTHERT: No, I'm just giving the procedure that
12 we just learned about as another example of the choice, it's
13 a choice. The don't -- certainly you cannot -- you can
14 choose not to respond to comments in the comment period.

15 THE COURT: I just don't want you to extrapolate
16 that they had a public comment period and they don't debate
17 the public during that public comment --

18 MR. ROTHERT: No.

19 THE COURT: -- period as that they are unresponsive.
20 Whatever we do here it's going to be real and based upon
21 what's really going on.

22 MR. ROTHERT: Right.

23 THE COURT: And what she said was not that's the way
24 it is, but that's the process and procedure by which they run
25 the Board meeting.

1 MR. ROTHERT: Right. And that evidence is a choice
2 to not follow up with those comments or engage with those
3 comments. And that gave Dr. Graves before she ran a sense
4 that they weren't being responsive to those concerns. And so
5 it's just the appearance of nonresponsiveness.

6 So the final factor, because I'm over my time --

7 THE COURT: I've interrupted you, so fundamental
8 fairness.

9 MR. ROTHERT: All right. The final factor is the
10 tenuousness of the justification for the procedures that tend
11 to discriminate. And here this is primarily at-large
12 districts that we're talking about, and the justification
13 that we've heard is that it allows --

14 THE COURT: Well, first and foremost it's required
15 by state law. That's the hard part.

16 MR. ROTHERT: Yes. Well, I mean, that is --

17 THE COURT: They can never come to you and say we
18 want to ignore state law and do it some other way.

19 MR. ROTHERT: That is true. In fact, if the state
20 law and the way it operates violates the Federal Voting
21 Rights Act then it's not a problem. But certainly that is a
22 justification.

23 THE COURT: That's why we're here, but they couldn't
24 do anything about it.

25 MR. ROTHERT: Right. That is a justification for

1 one of the laws or for maintaining that. But we also have to
2 discuss or decide whether or not the reason for that state
3 law is tenuous. Because state laws have been passed that
4 have racially discriminatory effects and that's what Section
5 2 is all about.

6 So the justification is that it allows the Board to
7 represent the whole district. And that testimony comes from
8 current Board members in their deposition designations and in
9 the live testimony you've seen.

10 But they all live in Ferguson and Florissant. And
11 the testimony from the fact witnesses on both sides of the
12 case is that there is a north/south divide. There is a
13 division of resources, and not all schools are represented
14 equally and not all parts of the district are represented
15 equally. So that's not what's happening. And that makes the
16 justification so much as that's a justification tenuous.

17 So in closing I would just say that at the end of
18 2014 as you know the world got in on our secret, and our
19 secret is that in many parts of St. Louis, including
20 particularly in North County, African Americans and whites
21 have a very different lived experience. And one of the
22 differences is that many, many white folks do not know just
23 how different that experience is. And a result of that is
24 that some local governments are not responsive to the
25 particularized needs of the African American community, and

1 that Ferguson-Florissant School District has been one of
2 those government entities. And there are several features of
3 elections there, primarily though the at-large feature that
4 combined with the historical and present day circumstances to
5 have a dilutive effect on the votes cast by African
6 Americans.

7 We like to think of our country -- I like to think
8 of our country as one that promises everyone an equal vote.
9 But, of course, we didn't start out that way. We refused
10 people the vote if they weren't white, if they weren't male,
11 if they didn't own property. And even after the 15th
12 Amendment, long after the 15th Amendment black voters were
13 still facing laws and procedures that prevented them from
14 having an equal opportunity to elect their preferred
15 candidates. And that's why the Voting Rights Act was enacted
16 in 1965 and why it's still the law today.

17 The totality of the circumstances in
18 Ferguson-Florissant School District demonstrates that equal
19 opportunity has not yet arrived for African American voters.
20 And just as the promise was supposed to be now, I think when
21 we started our country, and the promise of equal opportunity
22 to vote was supposed to be now when the 15th Amendment was
23 enacted, and the promise was supposed to be now when the
24 Voting Rights Act was enacted in 1965, the promise of an
25 equal opportunity to elect candidates of choice is now. Not

1 that it may come in the future, but the African American
2 voters have that right now.

3 So for this reason we'd ask the Court to find a
4 violation of Section 2 and proceed to a remedy phase.

5 THE COURT: Thank you. Are you ready, Mr. Rothert?
6 Mr. Rothert, are you ready?

7 MR. ROTHERT: Yes.

8 THE COURT: You may proceed.

9 MS. ORMSBY: Thank you, Your Honor.

10 Let no crisis go to waste. That should be the theme
11 of Plaintiffs' case against the Ferguson-Florissant School
12 District. Let's face it, if the word "Ferguson" was not in
13 the name of the school district, we would not be here today.
14 If only the Missouri NAACP and the ACLU had reached out to
15 the Board around district administrators prior to filing this
16 suit, they would have discovered a group of people who strive
17 each day to meet the needs of all students in the
18 Ferguson-Florissant School District. Perhaps they would have
19 realized there was another way, that partnering --

20 THE COURT: Slow down.

21 MS. ORMSBY: Okay. I'm sorry. That partnering -- I
22 have only 35 minutes.

23 THE COURT: Well, Mr. Rothert took an extra three or
24 four, so don't panic.

25 MS. ORMSBY: All right. Thanks, I won't. That

1 partnering with the School District to meet the needs of the
2 students was preferable to filing a lawsuit against the
3 district for simply complying with the State of Missouri's
4 election laws, election laws that ensure that the district is
5 represented as a unit and not segregated into separate
6 regions. They would have realized what people who live here
7 know, that the School District is so much more than the
8 world's perception of Ferguson.

9 Let me introduce to you the district's Board of
10 Education and superintendent. If you would just stand when I
11 call your name. First we have Paul Morris. Mr. Morris was a
12 teacher in the district for many years. When first elected
13 in 2011 riding a wave of anti-incumbent sentiment, he lived
14 in Ferguson. His children attended and graduated from the
15 district. During his time on the Board he moved to
16 Florissant where he currently resides.

17 Leslie Hogshead, who couldn't be here due to a
18 doctor's appointment, is the longest serving Board member and
19 lives in Ferguson right on the boundary of Berkeley. Leslie
20 Hogshead is the longest serving Board member. Her daughter
21 Erin graduated from the School District.

22 Rob Chabot, also first elected in 2011, lives in
23 Ferguson and his two kids attend district schools.

24 Scoot Ebert, elected in 2012, lives in Florissant
25 and also has two kids attending district schools.

1 Keith Brown, elected in 2013, lives in Ferguson and
2 his daughter Tara graduated and now teaches in the school
3 district. Mr. Brown has decided not to run for reelection in
4 this year's April election.

5 Donna Thurman, you heard from Dr. Thurman on
6 Thursday, was elected in 2014. She told you that she lives
7 in Florissant and worked as a principal in the district
8 serving at Griffith Elementary in Ferguson and Holman
9 Elementary in Berkeley. She testified under oath that she
10 believed the current at-large system was the best system for
11 governing the district. She told you of her fears of not
12 having qualified candidates who care about the entire
13 district elected under a single member district electoral
14 system. She also testified that April elections makes the
15 most sense for Board elections, and not having staggered
16 terms would be detrimental.

17 And, finally, Dr. Courtney Graves, just elected last
18 April 2015. She lives in Florissant and has two kids that
19 attend Cross Keys Middle School. She agreed with Dr. Thurman
20 that the at-large system is the best system for Board
21 elections citing the same concerns expressed by Dr. Thurman
22 last week.

23 Three Board members currently living on the south
24 side of the district, and four Board members living on the
25 north side.

1 And finally there's Dr. Davis, the newly hired
2 superintendent. You heard Dr. Thurman and Dr. Graves testify
3 that Dr. Davis is the man to lead this district forward to
4 address the issues of achievement gaps and discipline gaps
5 and accreditation and all the issues that plague not only
6 Ferguson-Florissant School District but all school districts,
7 not only in the St. Louis metropolitan area but across the
8 country. You heard many of Plaintiffs' witnesses share the
9 same sentiment about Dr. Davis.

10 We talk about cohesiveness in this case with regard
11 to election behavior, but this Board wants the Court to know
12 that they are cohesive. They cohesively support the
13 superintendent. They cohesively support the entire School
14 District and all of its students from border to border. The
15 Board cohesively supports the statutory at-large April
16 elections and serving staggered terms which are currently in
17 place.

18 Further, the Court should note that this Board is in
19 favor of proportional representation for African Americans on
20 their Board. They feel strongly that this point be made.
21 This Board is not standing against single member districts in
22 order to protect the status quo. This Board believes
23 at-large elections are the best way to conduct elections for
24 the school board in the district. They believe that at-large
25 elections provide the best opportunity for African Americans

1 to elect African American candidates.

2 Plaintiffs have failed to prove any violation of
3 Section 2 of the Voting Rights Act. Plaintiffs have failed
4 to provide -- to prove a violation of the *Gingles* factors,
5 and they failed to provide any evidence of violation of the
6 Senate Factors under the totality of the circumstances
7 standard.

8 Your Honor, I believe it makes sense to look at the
9 text of Section 2 itself; 52, USC, Section 10301. It
10 prohibits a voting practice or process that is not equally
11 open to voters of all ethnicities. In other words, Section 2
12 requires an equality of opportunity. And the Supreme Court
13 has repeatedly clarified that.

14 Under the current at-large system in
15 Ferguson-Florissant School Districts, African Americans have
16 that equal opportunity. Throughout this case Plaintiffs have
17 tried to persuade you that the at-large system violates
18 Section 2 because the outcome between the white voters and
19 African American voters has been unequal. But that's not
20 what Section 2 requires. It's not a guarantee of equal
21 outcomes. The question is whether there is an equality of
22 opportunity. And there is.

23 Whether there is a Section 2 violation should be
24 analyzed in the present day, and the evidence and expert
25 opinions in this case show that as of today African Americans

1 are a majority of the voting age population.

2 Dr. Rodden showed that no later than 2013, African
3 Americans were 51 percent of the voting age population.

4 Dr. Rodden testified that using trend analysis that
5 percentage is likely higher today. How do we know? First,
6 since 1990 the white population has rapidly shrunk and the
7 African American population has rapidly grown. Further,
8 there is a huge asymmetry in the school age population. The
9 student population is overwhelmingly African American.

10 Plaintiffs tried to steer this court away from trend
11 analysis, even though their expert witness, William Cooper,
12 relied on trend analysis for his opinion in *Fairley v.*
13 *Hattiesburg*, which was decided in an August 11th, 2015 order
14 that I would encourage this court to look at, it's Case No.
15 2:13-CV-18.

16 Mr. Cooper and Dr. Gordon offered up these
17 speculative theories as to why we can't rely on trends in
18 this case. It's because African Americans may be fleeing the
19 Ferguson area or we don't know how many African American
20 students are sticking around in the district after they turn
21 18. As Dr. Rodden pointed out, these speculative theories
22 are not consistent with good social science practice, and
23 there's been no data offered to support them. Plus, if you
24 look at evidence of trends in this case, you'll see that the
25 African American population has doubled in the last 20 years

1 while the white population has halved. If there were a
2 phenomena that were going to counteract those trends, the
3 magnitude of these phenomena would have to be massive, but we
4 don't have any evidence of them.

5 Let's talk a little more about Dr. Rodden's
6 calculation that any part African American voting population
7 is 51 percent based on the most current American Community
8 Survey data. As this court is well aware, Plaintiffs do not
9 want this court to look any further than the 2010 decennial
10 census, as if time were static and it stopped in 2010. But
11 the decennial census has its own flaws such as undercounting
12 African Americans. The district contends that the decennial
13 census should not be the exclusive and sole source of
14 demographic information in this case, especially when there
15 is more recent data out there; namely, the 2011, 2013
16 American Community Survey or ACS.

17 Plaintiffs tried to further distract from this issue
18 by claiming that Missouri state law requires the use of the
19 decennial census for certain purposes such as redistricting,
20 but that's not what we're doing here. We're trying to figure
21 out as of today the African American share of the voting age
22 population. There's no state law that prevents us from using
23 the ACS to do that.

24 Mr. Cooper admitted that his back of the envelope
25 calculation, which he would stand by, showed that in 2012 the

1 any part black voting age population was 49.8 percent, even
2 though he improperly used two different data sets to make
3 that calculation. 0.2 percent equals 102 people. While we
4 disagree with his method and calculation and his results,
5 it's impossible to believe that the African American voting
6 age population hasn't increased by 102 people in the last
7 four years.

8 Now, you heard Plaintiffs' counsel repeatedly ask
9 whether the U.S. Census Bureau actually publishes a
10 percentage for the any part African American percentage of
11 voting age population in the 2011, 2013 ACS. Dr. Rodden
12 acknowledged that it didn't, and that the 51 percent number
13 was based on his own estimate. Plaintiffs' counsel also
14 asked Dr. Rodden about margins of error in the ACS and
15 whether sampling methodology is reliable for population
16 estimates.

17 The district contends that there is plenty of
18 evidence to show that the ACS is reliable for purposes of
19 this case, and so are Dr. Rodden's estimates of any part
20 black voting age population as of the 2011, 2013 ACS. But
21 remember, Your Honor, Section 2 asks whether there is a
22 violation as of today. The 2011, 2013 ACS data is at least
23 three years old. Therefore, the question is what has been
24 happening since then?

25 I remember Dr. Gordon refused to answer any

1 questions about trend analysis because he didn't want to
2 speculate about the future; we're not talking about the
3 future. We're talking about what has happened up to today.
4 And there has been no evidence to persuade this court that
5 the undeniable trends of the last 25 years have discontinued
6 or reversed. When you combine that with the 2011, 2013 ACS
7 data and Dr. Rodden's estimates based on that data, you can
8 only reach one conclusion; African Americans are the majority
9 of the voting age population as we stand in this courtroom
10 today.

11 Now, Plaintiffs tried to temper this claim by
12 claiming that even if African Americans are the majority of
13 the voting age population, they are not a majority of the
14 voters. To make this point, it was incumbent on the
15 Plaintiffs to show that there are depressed rates of voter
16 registration and voter turnout among African Americans within
17 the district. You yourself asked Plaintiffs if they planned
18 to provide this information to the Court, to which they
19 replied in the affirmative. They didn't do it. Instead they
20 only offered evidence on a statewide registration rate of
21 African Americans and the statewide felony disenfranchisement
22 rates, and then they wanted this Court to assume that the
23 statewide rates are the same in the district.

24 But as Dr. Rodden testified, the gaps in
25 socioeconomic measurements between African Americans and

1 whites are actually smaller in the district than in the state
2 and that there are no prisons in the district, which is where
3 felons typically appear when it comes to demographics. This
4 means that if anything the gap in voter registration in the
5 district is actually smaller than it is statewide.

6 So Plaintiffs have a failure of proof as far as
7 voter registration goes. And then when it comes to turnout,
8 there is also a failure of proof. The only evidence
9 Plaintiffs offered was some homogenous precinct analysis
10 performed by Dr. Kimball. As both Dr. Rodden and Plaintiffs'
11 expert, Dr. Engstrom, testified, this sort of analysis is
12 unreliable. It relies on only a handful of precincts, five
13 in this case, instead of looking at the district as a whole.
14 Dr. Kimball incredibly offered this unreliable analysis after
15 writing in a blog that at least in 2014 the differential
16 between African American and white voter turnout was weak.

17 Dr. Rodden on the other hand examined voter turnout
18 as a percentage of registered voters. He found out with the
19 exception of two elections, African Americans and white voter
20 turnout has been basically the same in recent years. The two
21 exceptions were 2011 and 2015 in which there was a mayoral
22 election in Florissant that may have spurred voter turnout in
23 an area that is mostly white. Even though that increased the
24 gap in voter turnout in the district, it was an exogenous
25 influence and not something intrinsic within the district

1 that could help Plaintiffs' case.

2 And recall that Plaintiff's case tried to make a big
3 deal about Dr. Rodden calculating voter turnout as a percent
4 of registered voters as opposed to the voting age population
5 as a whole. That criticism would matter if we actually knew
6 the voter registration rate in the district, but the
7 Plaintiffs never offered it. And we know that African
8 Americans have a larger share of the voting population -- age
9 population, and so even if whites have a slightly better
10 turnout rate, there's an equal opportunity on both sides.
11 And now we're back to the text of the statute, an equal
12 opportunity means no Section 2 violation.

13 So what are we left with? Without a doubt African
14 Americans are majority of the voting age population. Without
15 a doubt African Americans are also the largest group of
16 voters. Without a doubt whites are minority of the voting
17 age population. And Plaintiffs have failed to establish the
18 voting age population is not a reliable proxy for actual
19 voters, so how can a larger group of voters be submerged into
20 a smaller group of voters? The answer is they can't.

21 Hazelwood School District uses the same election
22 system with comparable demographics, and they have a majority
23 African American School Board. I believe Plaintiffs' fact
24 witnesses were asked about that, one especially, and he said
25 it's self evident. We agree, we think that when African

1 Americans are the largest share of voters, it's self evident
2 that they have an equal opportunity to elect their candidate
3 of choice. And that's why this court should find in favor of
4 the District and not disrupt the current system.

5 *Gingles II* requires that African Americans and white
6 voters have distinctly different political preferences. And
7 *Gingles III* asks whether African American preferred
8 candidates typically lose because of white block voting. It
9 bears repeating here that cases discussing *Gingles II and III*
10 speak of a white majority that cancels out the votes of
11 African Americans. Of course we don't have a white majority
12 here.

13 There's been evidence showing that whites typically
14 prefer white candidates, and blacks typically prefer black
15 candidates. No one disputes that. In fact, that's the case
16 around the country as Dr. Rodden testified. But there are
17 also many elections where white and black voters share the
18 same candidate of choice, and there are also several
19 elections where whites cast a significant share of their
20 ballots for black preferred candidates and vice versa. In
21 other words, there's a lot of crossover voting.

22 Plaintiffs would have this court ignore the overlap
23 in voter preferences by imposing an unduly narrow definition
24 of what qualifies as a minority preferred candidate.
25 Plaintiffs have offered a series of restrictions such as if

1 there's an overlap in the confidence intervals then we can't
2 qualify that as a candidate of choice.

3 Now, it's true that in other contexts confidence
4 intervals mean we don't know for certain whether one number
5 is higher than the other, such as in voting turnout. But as
6 Dr. Rodden testified, it does not make sense to use this
7 confidence interval restriction when identifying candidates
8 of choice because it ignores the inherent feature of a
9 multi-vote system. In other words, Plaintiffs want to go
10 inside the minds of the voters and say, well, they didn't
11 really prefer this person, but we can't know what the voters
12 really thought, so the best method available is to rank
13 preferences according to the highest point estimates.

14 But it's not enough just to show a correlation.
15 *Gingles III* also requires that white block voting be
16 responsible for African American preferred candidates losing.
17 As we have shown throughout trial, when an African American
18 preferred candidate loses an election, there is more to it
19 than meets the eye. For example, even though African
20 American voters did not see any of their preferred candidates
21 elected in 2011, there was a huge anti-incumbent sentiment
22 among voters, and African American voters supported two
23 incumbents.

24 I found it deeply ironic that Dr. Engstrom testified
25 that electoral success of Dr. Graves in 2015 should be

1 chalked up to some alternative cause, but when it came to
2 election years such as 2011, he was unwilling to look at
3 alternative causation. I believe Dr. Engstrom was on the
4 stand and said that *Gingles* does not require causation
5 analysis, but then he admitted that he did causation analysis
6 in 2015. Why? Because Plaintiffs want to discount the
7 success of African Americans, but they don't want to hear
8 about alternative causation whenever African Americans lose.
9 For them it's always about race, unless it's a good election
10 for African Americans, then it's about something else.

11 I want to talk briefly about those close calls. As
12 Dr. Rodden testified, if there were only 216 votes that had
13 been cast for Mr. Savala and Mr. Henson, we would have a
14 majority African American Board today. Only 216 votes. I
15 want that to sink in. Does that sound like a system that
16 does not provide an equal opportunity to both sides? Does
17 that sound like a system that needs to be overhauled.
18 Changing an election system is not something that this court
19 takes lightly, and rightly so. The corollary is that
20 Plaintiffs must give this court a sufficient basis to do so,
21 and they haven't.

22 Even if the Court should find some violation under
23 the *Gingles* factors, which the District vigorously argues is
24 not possible, Plaintiffs must also prove under a totality of
25 the circumstances standard violations of the Senate Factors.

1 Defendants do not deny the historical and shameful past of
2 discrimination against African Americans in the St. Louis
3 area, but the analysis must go farther. Does that past
4 discrimination prevent African Americans today from
5 participating in the electoral process? Plaintiffs provided
6 no evidence, as I previously discussed, that in the
7 Ferguson-Florissant School District African Americans do not
8 register to vote at the same level as whites. I've also
9 discussed the testimony that showed that African Americans
10 and white voters turn out to vote at relatively the same
11 rate.

12 And Mr. Hudson, Mr. Henson, Dr. Graham, Mr. Johnson,
13 Dr. Thurman, and Dr. Graves all testified under oath that
14 they had full access to the political process. The evidence
15 shows that African Americans are not preventing --

16 THE COURT: Doesn't that really go to more of the
17 systemic problems? As we know in the school district,
18 80 percent of whites own their homes, 50 percent or fewer of
19 the African Americans rent, right?

20 MS. ORMSBY: 50.7 of African Americans own their
21 homes.

22 THE COURT: But almost 50 percent rent.

23 MS. ORMSBY: Right.

24 THE COURT: And we know by definition, and we
25 actually heard your witness this morning, moving engenders

1 another obligation to register. And the historical housing
2 discrimination creates that. It's not anything the School
3 Board did, but we're left with the reality that renters are
4 less stable typically by definition and, therefore, the
5 barrier to voting is greater because every time they move
6 they are going to have to register. Where that 80 percent of
7 the whites who register, it's done. Just systemic issues in
8 housing discrimination otherwise. I mean, that's all built
9 into this that I have to consider, correct?

10 MS. ORMSBY: That's correct.

11 THE COURT: All right. So you can't say there's no
12 evidence or there's no impact. And it does matter.

13 MS. ORMSBY: I believe it does matter, but it's
14 incumbent on the Plaintiffs to show you if it matters enough,
15 and they haven't done that.

16 THE COURT: All right.

17 MS. ORMSBY: Mr. Green, former Ferguson-Florissant
18 NEA president -- wait a minute, I lost my space, I'm going to
19 go back.

20 We've heard lots of testimony with regard to
21 racially polarized voting. The parties agreed that 2014 was
22 an election that was racially polarized, but Plaintiffs fail
23 to provide any convincing evidence of such in the other
24 elections analyzed. And you've heard Dr. Thurman and
25 Dr. Graves testify that just because a candidate is black

1 does not mean that candidate is someone they have supported.
2 Every fact witness has testified that they have voted for and
3 supported candidates of the opposite race. Testimony
4 supported the fact that whether a candidate is deemed
5 qualified is the most important criteria for choosing a
6 candidate.

7 Mr. Green, former Ferguson-Florissant NEA president,
8 testified that there is no FFNEA slating process that
9 excludes African American candidates. Candidates are not
10 recruited to run. Their endorsement process is open to all
11 candidates. And there is no control over the endorsed
12 candidate's campaign. FFNEA is not a slating organization.
13 Dr. Kimball carelessly did not even bother to find out the
14 FFNEA or the North County Labor Club's endorsement process or
15 which candidates even applied before irresponsibly alleging
16 that the endorsement system was detrimental to African
17 American candidates.

18 Your Honor, I really want to focus on this candidate
19 slating issue for a minute here because I think it's a
20 microcosm of the Plaintiffs' case. Senate Factor 4 asks
21 about the exclusion of members of the minority group from
22 candidate slating processes. In other words, are African
23 Americans shut out of the slating process itself? We've
24 already shown that the FFNEA and North County Labor are not
25 slating organizations. However, Plaintiffs focus their

1 entire case on outcomes of the slating process. In other
2 words, did African American candidates receive the same
3 number of endorsements as whites? But what Plaintiffs didn't
4 focus on, as they should have, is whether African Americans
5 were excluded from the process itself, such as whether the
6 slating groups refused to send them questionnaires or invite
7 them to interviews. There was no evidence on this.

8 But if you look at Plaintiffs' case from trial, you
9 would think that Senate Factor 4 requires slating groups,
10 should they exist, to give equal number of endorsements to
11 both races. But that's not what it requires. It only
12 requires that the slating process be equally open to both
13 races, and it is, as Mr. Green, Dr. Graves, Dr. Graham, and
14 Dr. Thurman all testified.

15 Now, I said that Plaintiffs' treatment of Senate
16 Factor 4 is a microcosm of Plaintiffs' entire case. Why?
17 Because Plaintiffs treat Section 2 as requiring equality of
18 outcomes in elections, just as they treat Senate Factor 4 as
19 requiring equality of endorsements in its slating process.
20 That's not what either issue is about.

21 That brings me to the issue of responsiveness to the
22 needs of the African American community. During this trial
23 you didn't only hear from Board members Dr. Thurman and
24 Dr. Graves, you also heard from Dr. Graham, a former Board
25 member who was elected in 1988 and who served until 2011.

1 She herself told you how in her experience the Board has been
2 responsive to the concerns of the African American community
3 during her time on the Board, and that her failure to receive
4 the FFNEA endorsement in 2011 and her eventual loss had
5 nothing to do with her race, but had to do with an agitated
6 electorate that as a result of some of the incumbent's votes.

7 Past and present African American Board members
8 testified the Board was responsive to their suggestions.
9 Mr. Green testified that the Board acted in the best interest
10 of all students, both black and white. But Plaintiffs would
11 rather you look at the emotional issue of Dr. McCoy's
12 suspension and eventual resignation. Because the Board did
13 not announce to the world the specifics of the personnel
14 issue with Dr. McCoy, Plaintiffs would have you believe that
15 the Board is not responsive to the African American
16 community. No other examples of unresponsiveness was
17 presented, only the issue of Dr. McCoy's suspension and
18 eventual resignation. The Board followed its policies and
19 procedures with regard to personnel issues, the same policy
20 and procedure that Dr. Graham testified was in place during
21 the time she served on the Board. The Board protected
22 Dr. McCoy's privacy. The Board attempted to show concern
23 about the community's confusion and anger while following
24 their policies. You saw how angry the crowd was at the
25 infamous board meeting shown on the video played by

1 Plaintiffs. The Board moved the meeting to a facility that
2 would provide an opportunity for everyone to attend. They
3 listened to each and every person who wanted to voice their
4 concerns. They sat there while people like Mr. Hudson
5 screamed and threatened them with legal action. Yet when you
6 asked Mr. Hudson or Mr. Henson or Mr. Pruitt or Mr. Johnson,
7 all who claim to have known Dr. McCoy personally, whether
8 they asked Dr. McCoy for the information they so desperately
9 wanted, they all said they did not, they didn't think it
10 would be appropriate.

11 Other than this one example which holds no merit,
12 Plaintiffs failed to provide any other examples of the
13 Board's lack of responsiveness to the needs and concerns of
14 the African American community.

15 It's true that this area has an unfortunate history,
16 and no one disputes that, and there are vestiges of that
17 history. But there has been no evidence presented that the
18 Board members are perpetuating those vestiges. To the
19 contrary, as you heard via testimony, and you'll see in the
20 deposition designations, the Board members are doing
21 everything in their power to provide the best education for
22 all students.

23 You've heard testimony that the Board members, no
24 matter where they live, are able to learn about and interface
25 with residents of all geographic areas. Some went to school

1 in those other areas. Some worked in those other areas.
2 They represent the entire district. And, in fact, an
3 at-large system helps guarantee responsiveness because Board
4 members are accountable to all geographic areas, not just
5 some.

6 Even Plaintiffs' fact witness, Dr. Graham, testified
7 that running an election across the entire district is
8 possible as long as you work hard and get out the vote. And
9 you have heard testimony that a single member district system
10 would reduce the candidate pool and entrench incumbents. In
11 fact, that's what's happened in the cities in this area that
12 use single member districts.

13 Plaintiffs want to ignore those comparisons but they
14 are there and they should not be ignored. The bottom line is
15 that both expert witnesses' and lay witnesses' testimony
16 confirm that the at-large system is best for the district,
17 both for its voters and its students. Plaintiffs wanted to
18 impugn the District for holding elections in April when we
19 know that's a creature of state law and there are legitimate
20 public policy reasons for doing so. Plaintiffs wanted to
21 impugn the District for staggered terms, but that's actually
22 helpful so we don't get a fresh Board coming in and out and
23 having to learn from scratch. That's the best they could
24 come up with, and it's just not enough under the totality of
25 the circumstances.

1 I could go on and on but the pattern is the same,
2 Plaintiffs failed to provide evidence that vote dilution has
3 occurred which prevents African Americans an equal political
4 opportunity.

5 I would be remiss, however, if I failed to point out
6 to the Court an example of how -- an example of how
7 Plaintiffs want both their cake and to eat it too.
8 Plaintiffs argued vigorously against Dr. Rodden's findings
9 and opinion that currently the African American voting age
10 population is over 50 percent as I previously discussed. Yet
11 in their proposed illustrative plans they ask there be four
12 majority African American districts. Does this make sense?
13 If the African American voting population is less than
14 50 percent, wouldn't three districts be proper? But they ask
15 for four. Plaintiffs can't have it both ways.

16 The Ferguson-Florissant School District is following
17 Missouri statutes. As a result they are faced with this
18 lawsuit. The costs have been high, not just monetarily, but
19 in terms of time, effort, and attention. All of these costs
20 are better spent on the students of the Ferguson-Florissant
21 School District.

22 I urge this Court to find in favor of the District.
23 Let these good people go about their jobs of educating the
24 students of the District. That's why they volunteer for the
25 job of School Board. That's why Dr. Davis was hired. Let

1 them spend the District's money on educating and caring for
2 the students of the District. Let them spend their time,
3 efforts, and attention on educating and caring for the kids
4 attending school in the District. Let them focus on what is
5 important. Let these Board members do what they've been
6 elected and volunteer to do. Let this superintendent get on
7 with what he was hired to do. Agree with these Defendants
8 that the best opportunity for African American representation
9 is the current at-large system. Find that the District has
10 not violated Section 2 of the Voting Rights Act.

11 Thank you.

12 THE COURT: Thank you all very much. Who is going
13 to take the lead here? Mr. Rothert, you're anticipating
14 something, so what do you got?

15 MR. ROTHERT: Are we going to talk about scheduling?

16 THE COURT: Yeah.

17 MR. ROTHERT: Well --

18 THE COURT: I still have to read two binders of
19 depositions you all gave me on Thursday.

20 MR. ROTHERT: You're welcome. I spoke with
21 Ms. White, the court reporter from last week, and she
22 indicated that she thinks the transcripts could be addressed
23 within six weeks, and that she is going to try to get them
24 out on a rolling basis.

25 THE COURT: That would be helpful to everybody.

1 MR. ROTHERT: So I think the earliest --

2 THE COURT: Have you all talked about a schedule?

3 MS. ORMSBY: No, Your Honor.

4 MR. ROTHERT: We haven't.

5 THE COURT: Why don't you approach. Let's work
6 through it. So what were you thinking?

7 MR. ROTHERT: What is it that you're looking for?

8 THE COURT: Well, there's two things at this point:
9 Proposed findings of fact and conclusions of law from the
10 parties. We have some issues that were kind of left
11 outstanding as to Dr. Kimball's testimony on voter
12 registration, bullet voting, and super majority testimony.
13 Weigh in on that, tell me what you think.

14 And maybe you all can agree on this, why I hesitated
15 to say the evidence is over, Dr. -- it wasn't Dr. --
16 Mr. Cooper, he has the Washington apple picker history, but
17 obviously he's done a lot of this work. Wanted to get into
18 some new ACS data I thought, but it was objected to because
19 nobody had seen it. Not to strike terror in anybody's heart,
20 but the world didn't end in 2010 as we all know. A lot of
21 things have happened, a lot of things continue to happen.

22 You know, if there is out there a better set of data
23 as to the voting age population in the school district, I'd
24 like to know it.

25 MS. ORMSBY: Your Honor, that --

1 THE COURT: But I --

2 MS. ORMSBY: I would just state that he was
3 referring to the 2014, one year ACS.

4 THE COURT: Oh, okay.

5 MS. ORMSBY: Which is not applicable to the size of
6 the school district.

7 THE COURT: There's a three-year ACS and a five-year
8 ACS, but the one-year ACS is --

9 MS. ORMSBY: Correct.

10 THE COURT: I get it, if that's all we were talking
11 about.

12 MS. ORMSBY: Yes.

13 THE COURT: But if there's a five-year ACS that's
14 available. I mean, any speech I give in any case, I don't
15 like to create an artificial universe. We need to deal with
16 reality, right?

17 MS. ORMSBY: Your Honor, the five-year is actually
18 data that's older than the three years.

19 THE COURT: Oh, so it's a rolling five-year?

20 MR. ROTHERT: It's a rolling five years so it goes
21 back.

22 THE COURT: But you understand my point.

23 MS. ORMSBY: I absolutely do.

24 THE COURT: If there is better information.

25 MS. ORMSBY: Absolutely do.

1 THE COURT: Because -- and let me just throw out,
2 and I know we're not at the remedy phase, but even if we
3 take, I assume the facts in the light most favorable to the
4 Plaintiffs, the voting age population is roughly equal within
5 the margin of error. If I were to take a graph from 1980 or
6 1990 forward, which I bet it's flattened out a little bit,
7 but if I were just to draw a graph, Dr. Rodden has got a
8 point.

9 I'm just telling you what I need to hear from you
10 all, you know what I mean. If I were to still find a
11 violation, are there remedies out there that sunset? I mean,
12 one of the problems I have, of course, is this is a state law
13 and every other school district in the state, I guess save
14 for the Kansas City School District --

15 MR. ROTHERT: Correct.

16 THE COURT: -- follows that state law. I'm just
17 talking out loud to be honest with you guys. The points you
18 make, there's a lot of valid points, but they are not just
19 valid in Ferguson-Florissant, right, the state legislature at
20 some point evaluated all those factors and made some
21 decisions, so there's public policy of the state. You're
22 asking me to change it because it contributes to the
23 situation that you described. But it's not unique, I mean,
24 there's -- how many school districts are there in North
25 County? One of our biggest Balkanization problems was St.

1 Louis, right? There's a lot. Why is Ferguson-Florissant
2 unique among them? I need to understand, and what, if
3 anything, I should do.

4 And is the remedy -- I mean, you know, the first
5 thing Dr. Rodden said is I didn't want to take this case
6 because I thought it was antithetical to my view of African
7 American participation in their community. But the more I
8 looked at it, he said, the more I concluded that the remedy
9 that the Plaintiffs are seeking actually damages the African
10 American community.

11 The last thing any of us want is a counterintuitive
12 result. I need help on that. I need help on the Dr. McCoy
13 issue. I'm just telling you where I see the strengths and
14 weakness and where I need the most help in understanding the
15 situation, because there isn't anyone here who doesn't want a
16 school board that represents the students that make sure that
17 the students get educated. I don't doubt the sincerity and
18 the motives of everyone in this room.

19 MS. ORMSBY: May I --

20 THE COURT: There's nuances to the facts, and what
21 do we do about it. And you need to help me so I get to that
22 place. I mean, Mr. Cooper was able to draw not just four but
23 six African American districts out of seven. That's pretty
24 amazing stuff. So anyway, I'm all ears to it.

25 What other issues do you all think you need to weigh

1 in on? I mean, obviously you're not going to do this in 15
2 pages, I kind of feel that coming.

3 MR. ROTHERT: And these issues that you want us to
4 weigh in on, do you want that as part of the proposed
5 conclusions of law?

6 THE COURT: No, I think a separate brief.

7 MR. ROTHERT: Or a separate brief.

8 THE COURT: A separate brief.

9 MR. ROTHERT: Okay.

10 THE COURT: And then you have your proposed findings
11 of fact and conclusions of law. I see them as separate
12 documents. And I'm being totally honest with you about what
13 I need to understand better so I can do the right thing in
14 this case, whatever that is.

15 MS. ORMSBY: Your Honor.

16 THE COURT: Yeah.

17 MS. ORMSBY: As far as the McCoy issue, I personally
18 can provide information because I was the attorney for the
19 district in that case and had the conversations with
20 Dr. McCoy and his counsel. I'm happy to provide an affidavit
21 providing the information I have.

22 THE COURT: No, I mean, I don't --

23 MS. ORMSBY: I don't think there's any testimony --

24 THE COURT: -- think disclosing secrets to me helps
25 anybody.

1 MS. ORMSBY: Right. I just don't think there's any
2 testimony that can be provided.

3 THE COURT: No, the confidential nature of that, I
4 don't see any reason to invade that.

5 MS. ORMSBY: Okay.

6 THE COURT: But I need to understand --

7 MR. ROTHERT: How it's applicable.

8 THE COURT: -- how it's applicable to this case.

9 MS. ORMSBY: Okay.

10 THE COURT: I find it a difficult issue at best.
11 But I understand Mr. Rothert's argument that the failure to
12 respond to it, even if appropriate on one hand there were
13 other ways that could have been responded to. I've got to
14 figure out in context what to do with it.

15 But I'm just -- you asked me what I was curious
16 about, those are the things -- and I got a lot -- apparently
17 I got several hundred, maybe a thousand pages of reading to
18 do before I get to your briefs when I read all the deposition
19 excerpts you've agreed on.

20 And of course there's just the overarching issue of
21 is the remedy appropriate in a roughly equal jurisdiction;
22 that is, roughly equal between African American and
23 non-Hispanic white voters. What do you do, and what are the
24 potential remedies?

25 So now is the time when we're being honest, what

1 else do you think we ought to cover?

2 MR. ROTHERT: Well, do you want us -- I mean, we've
3 not talked about potential remedies in our briefing so far.
4 Is that something that would be helpful?

5 THE COURT: You've shown me there's a remedy.

6 MR. ROTHERT: Right.

7 THE COURT: I mean, let's be honest, say here's a
8 remedy that's available, I get that. That's probably the
9 lowest barrier you got in some ways.

10 MR. ROTHERT: But we could be more deliberate about
11 that and more specific.

12 THE COURT: The one piece I know is you have an
13 interest in telling me why I don't listen to Dr. Rodden and
14 not upset the apple cart if things are trending a certain
15 way, let's be honest. And I would hate to institutionalize a
16 remedy that has the opposite effect of what you wanted, and
17 that is to limit the voting power of African American voters
18 by carving up the District and preserving white non-Hispanic
19 white seats. Right? Are there any cases out there where the
20 remedy has a sunset or the Court retains jurisdiction to
21 revisit after the next census, those kind of things? I just
22 want --

23 MR. ROTHERT: Right.

24 THE COURT: -- it for the calculus. That's all part
25 of it. So when -- unfair to you now, when do you want to

1 write all this?

2 MR. ROTHERT: Well, it seems like the brief part
3 probably happened before there was a transcript maybe. But I
4 think -- I calculate around March 4th is when we'll probably
5 have the whole transcript, although it will be rolling in
6 before then.

7 THE COURT: So given that, when do you think --

8 MS. ORMSBY: Well, considering our testimony is at
9 the end of that rolling transcript --

10 MR. ROTHERT: That's true.

11 MS. ORMSBY: -- I would certainly like two to three
12 weeks after that transcript is complete before any sort of
13 facts or conclusion, preferably four weeks actually. Thirty
14 days would be nice.

15 THE COURT: Yeah. What do you think, Mr. Rothert?

16 MR. ROTHERT: Well, we'd like it to be shorter than
17 that.

18 THE COURT: Sure.

19 MR. ROTHERT: Four weeks after would be April Fool's
20 Day.

21 THE COURT: We're going to make it April the 8th.

22 MS. ORMSBY: Thank you, Your Honor.

23 THE COURT: The weekend before that is Good Friday,
24 April Fool's Day, none of those feel good at the moment. So
25 April the 8th. And how long to respond? I'll give you a

1 chance to respond to each others' -- because it's
2 simultaneous briefs and simultaneous responses, we're not
3 going to do a staggered brief or response reply. You want
4 two weeks, three weeks, and I'll take it under submission?

5 MR. ROTHERT: I think there will be -- we'll
6 probably be anticipating each other's responses pretty well,
7 so two weeks?

8 MS. ORMSBY: That's fine.

9 THE COURT: So April the 22nd. Anything else we
10 should talk about while we're together?

11 MS. ORMSBY: The brief that you want on these
12 issues, the same date?

13 THE COURT: Same dates.

14 MS. ORMSBY: All right. I can't think of anything
15 else.

16 MR. ROTHERT: I think that's it.

17 THE COURT: Well, thank you all very much. It was a
18 well tried case. I enjoyed everyone's efforts, appreciate
19 them, and look forward to working with you in the future.
20 Thank you.

21 MS. ORMSBY: Thank you, Your Honor.

22 (Court in recess at 12:17 p.m.)
23
24
25

C E R T I F I C A T E

I, Susan R. Moran, Registered Merit Reporter, in and for the United States District Court for the Eastern District of Missouri, do hereby certify that I was present at and reported in machine shorthand the proceedings in the above-mentioned court; and that the foregoing transcript is a true, correct, and complete transcript of my stenographic notes.

I further certify that I am not attorney for, nor employed by, nor related to any of the parties or attorneys in this action, nor financially interested in the action.

I further certify that this transcript contains pages 1 - 93 and that this reporter takes no responsibility for missing or damaged pages of this transcript when same transcript is copied by any party other than this reporter.

IN WITNESS WHEREOF, I have hereunto set my hand at St. Louis, Missouri, this 26th day of February, 2016.

/s/ Susan R. Moran
Registered Merit Reporter